UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,401	03/09/2004	Marc Radow	501120-014	5592

7590 08/21/2008

Marc Radow
1900 Joy Lake Road
Reno, NV 89511

EXAMINER	
GROSSO, HARRY A	

ART UNIT	PAPER NUMBER
3781	

MAIL DATE	DELIVERY MODE
08/21/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/797,401	RADOW, MARC	
	Examiner	Art Unit	
	HARRY A. GROSSO	3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 May 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8 and 10-28* is/are pending in the application.

4a) Of the above claim(s) *24-28* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8 and 10-23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *5/19/08*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

The objection to claims 16 and 18 has been overcome by the amendment filed May 19, 2008. The objection is withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 1-8, 10, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jonas et al (5,234,126) (Jonas) in view of Echternach (GB 2 119 743 A, November 23, 1983).

2. Regarding claim 1, Jonas discloses a receptacle having a recessed portion (Figure 5), a convex raised portion (12) and a vertical outer wall (11). The raised portion is substantially circular and can have an outer diameter (G) of approximately two inches to less than 6 inches as seen in Figure 5 where G is 1.830 inches (column 9, lines 53-59 and column 12, lines 15-21) and in column 16, lines 11-15 where dimension B is defined as being in the range of 0.8879 inch to 3.6219 and G is greater than B by some dimension less than 1 inch. Jonas does not teach the outer wall extending upwardly a second distance to a rim with an opening dimension greater than the second distance. Echternach discloses a similar container for use in similar processing with an outer wall portion extending upwardly a second distance to a rim (Figure 3) with an opening dimension greater than the second distance (page 2, lines 94-99). It would have been

obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of an outer wall portion extending upwardly a second distance to a rim with an opening dimension greater than the second distance as disclosed by Echternach in the receptacle disclosed by Jonas since it is known in the art to utilize containers with these dimensions.

3. Regarding claim 2, Jonas discloses the raised portion is a continuous closed surface.

4. Regarding claim 3, Jonas discloses the raised portion is substantially dome shaped.

5. Regarding claims 4 and 5, Jonas as modified by Echternach discloses the claimed invention except for the distance from the recessed portion to the top-most portion of the raised portion being three quarter inch, which is greater than approximately 1/2 inch. It would have been an obvious matter of design choice to have made the distance from the recessed portion to the top-most portion of the raised portion three quarter inch, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

6. Regarding claim 6, Jonas discloses a substantially flat surface in the recess (25).

7. Regarding claim 7, Jonas discloses the outer wall portion extends substantially vertically.

8. Regarding claim 8, Jonas discloses the outer wall portion forms a substantially circular wall.

9. Regarding claim 10, the container of Jonas as modified by Echternach would have a second distance that is at least twice the first distance.

10. Regarding claim 12, Jonas discloses a receptacle having a recessed portion (Figure 5), a convex raised portion (12) and a vertical outer wall (11). Jonas does not teach the outer wall extending upwardly a second distance to a rim with an opening dimension greater than the second distance. Echternach discloses a similar container for use in similar processing with an outer wall portion extending upwardly a second distance to a rim (Figure 3) with an opening dimension greater than the second distance (page 2, lines 94-99). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of an outer wall portion extending upwardly a second distance to a rim with an opening dimension greater than the second distance as disclosed by Echternach in the receptacle disclosed by Jonas since it is known in the art to utilize containers with these dimensions. Echternach further discloses that the second distance in one embodiment is 1.750 inches which is approximately 2 inches, approximately being a term that allows some variance. Additional, Echternach discloses that the container can be a 307 x 200.25 can (3.4375 inch diameter by 2.0156 inch height).

11. Regarding claim 13, Jonas discloses the raised portion and the outer wall portion extend substantially in a circle.

12. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jonas as modified by Echternach in view of Sugiyama et al, of record

13. Jonas as modified by Echternach discloses the invention except that the second distance is approximately twice the first distance. Sugiyama et al discloses a similar receptacle with a raised portion that has a vertical height approximately half the second distance (Figures 1 and 4). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a raised portion that has a vertical height approximately half the second distance as disclosed by Sugiyama et al in the receptacle disclosed by Jonas as modified by Echternach since this capability is know in the art and can provide increased strength.

14. Claims 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harvey (3,272,383) in view of Echternach and Sugiyama et al.

15. Regarding claim 14, Harvey discloses a receptacle having an upper rim (22, Figures 1-2), an outer wall portion (21) and a bottom portion with a flat surface (35) and a raised portion (C) extending substantially constantly upwardly to a center of the receptacle. Harvey does not teach a first distance between the rim and the base is between one-quarter and two inches. Echternach discloses a similar container for use in similar processing with an outer wall portion extending upwardly a second distance to a rim (Figure 3) with a first distance of 1.750 inches (page 2, lines 94-99). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a first distance between the rim and the base of 1.750 inches to the base as disclosed by Echternach in the receptacle disclosed by Jonas since it is known in the art to utilize containers with these dimensions.

16. Harvey as modified by Echternach discloses the invention except that the raised portion has a vertical height half the first distance. Sugiyama et al discloses a similar receptacle with a raised portion that has a vertical height approximately half the first distance (Figures 1 and 4). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a raised portion that has a vertical height approximately half the first distance as disclosed by Sugiyama et al in the receptacle disclosed by Harvey as modified by Echternach since this capability is know in the art and to provide increased strength.

17. Regarding claim 15, Harvey discloses the raised portion is convex.

18. Regarding claim 16, Harvey discloses the raised portion has a substantially constant curvature.

19. Regarding claim 17, Harvey discloses the wall portion is substantially vertical.

20. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Harvey (3,272,383) as modified by Echternach and Sugiyama et al in view of Lyu et al, of record. Harvey (3,272,383) as modified by Echternach and Sugiyama et al discloses the invention except for the raised portion including a substantially vertical wall joined to the base. Lyu et al discloses a similar container with a raised portion in the bottom (Figures 1-2) that includes a substantially vertical wall (20, column 2, lines 47-48) joined to the base. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a raised portion including a substantially vertical wall joined to the base as disclosed by Lyu et al in the receptacle

disclosed by Harvey as modified by Echternach and Sugiyama et al to provide an alternative end profile that is known to withstand internal pressure.

21. Claims 19 and 20 rejected under 35 U.S.C. 103(a) as being unpatentable over Biggins, of record, in view of Jonas, Echternach and Sugiyama et al.

22. Regarding claim 19, Biggins discloses a round container (Figures 1-2) with an upper rim (6), a vertical outer wall portion (3), a base portion with a flat surface facing upwardly (15), a raised portion extending inwardly from the base portion (14), and a round rimming dish (8) having a recessed area and a raised area of a size to allow manual grasping of the raised area.

23. Biggins does not teach that the raised portion of the container extends substantially constantly upwardly toward a center of the receptacle. Jonas discloses a similar container and a convex raised portion extending inwardly from the base portion and substantially constantly upwardly toward a center of the receptacle (Figure 5). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a convex raised portion extending substantially constantly upwardly toward a center of the receptacle as disclosed by Jonas in the receptacle disclosed by Biggins since it is know in the art that a raised portion of this configuration will provide increased strength against internal force pressing down on the raised portion.

24. Biggins and Jonas do not teach a first distance between the rim and the base is between one-quarter and two inches. . Echternach discloses a similar container with an outer wall portion extending upwardly a second distance to a rim (Figure 3) with a first

distance of 1.750 inches (page 2, lines 94-99). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a first distance between the rim and the base of 1.750 inches to the base as disclosed by Echternach in the receptacle disclosed by Biggins and Jonas since it is known in the art to utilize containers with these dimensions.

25. Biggins as modified by Jonas and Echternach does not teach that the raised portion has a vertical height approximately half the first distance. Sugiyama et al discloses a similar receptacle with a raised portion that has a vertical height approximately half the first distance (Figures 1 and 4). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a raised portion that has a vertical height approximately half the first distance as disclosed by Sugiyama et al in the receptacle disclosed by Biggins as modified by Jonas and Echternach since this capability is know in the art and to provide increased strength.

26. Regarding claim 20, Biggins discloses a lid sized to fit over the container rim (7).

27. Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harvey in view of Lyu et al and Echternach.

28. Regarding claims 21 and 22, Harvey discloses a receptacle having an upper rim (22, Figures 1-2), an outer wall portion (21) and a bottom portion with a flat surface (35) and a raised portion (C) extending upward to an upper position below the rim. Harvey does not teach the upper position is greater than or equal to about one-half inch and less than two inches. Lyu et al discloses a similar receptacle with a raised portion in the

bottom (Figure 1) and the upper position (H2) would be about one-half inch for a receptacle having a diameter of about 3.5 inches and increases to other heights less than two inches as the receptacle diameter increases. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of raised center portion having an upper position greater than or equal to about one-half inch and less than two inches as disclosed by Lyu et al in the receptacle disclosed by Harvey since it is known in the art to use a raised portion with these dimensions in similar containers.

29. Echternach discloses a similar container for use in similar processing with an outer wall portion extending upwardly to a rim (Figure 3) with an opening dimension greater than the distance from the bottom portion to the rim(page 2, lines 94-99). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of an outer wall portion extending upwardly a distance to a rim with an opening dimension greater than the distance from the bottom to the rim as disclosed by Echternach in the receptacle disclosed by Harvey since it is known in the art to utilize containers with these dimensions.

30. Regarding claim 23, Harvey discloses the raised portion has a curvature over substantially is entire surface.

Response to Arguments

31. Applicant's arguments filed May 19, 2008 have been fully considered but they are not persuasive. Applicant argues that Jonas discloses a receptacle in which the preferred practice is to keep as much of the bottom wall as flat as possible and further

discloses a bottom profile with critical dimensions developed using complex processes. Echternach discloses a receptacle with a significantly different bottom profile, therefore the teachings of Jonas and Echternach contradict each other and one skilled in the art would not apply the teachings of one to the other. In response, Jonas discloses the limitations of the bottom profile of the instant invention but does not address the height (distance from the bottom to the rim) of the receptacle or the relation of the height to the diameter of the opening at the rim. Echternach discloses a receptacle for similar processing and further discloses that the receptacles can have rim diameters larger than the height of the container. Echternach is used merely as a teaching that the receptacles can have rim diameters larger than the height of the container. This teaching is not contradicted by Jonas. Jonas and Echternach are analogous art and one of ordinary skill in the art would be knowledgeable in the area of receptacle dimensions.

32. Applicant argues that Harvey has no teaching or suggestion that the bottom configuration would be suitable for a container that is lower than it is wide and Echternach teaches that pre-existing bottom configurations are not suitable, thus combining Harvey and Echternach is not proper. In response, Harvey does not address the height of the receptacle or the relation of the height to the rim diameter of the receptacle. Echternach's observation that pre-existing bottom configurations are not suitable is not relevant since it is a broad general statement not identifying what configurations are being addressed. Both Harvey and Echternach are one piece metal cans intended for food products. Echternach is used merely as a teaching that the receptacles can have rim diameters larger that the height of the container. This teaching

is not contradicted by Harvey. Harvey and Echternach are analogous art and one of ordinary skill in the art would be knowledgeable in the area of receptacle dimensions.

33. Applicant argues that Harvey requires the formation of "chine A" and it is not seen how one skilled in the art would look to Harvey to reach the container claim. In response, applicant does not point out why the presence of "chine A" in the receptacle of Harvey would prevent the container of Harvey from functioning as the container claimed or how the presence of "chine A" would prevent the combination of Harvey with other references.

34. Applicant argues that the teachings of Lyu and Jonas are contradictory and combining of the references would not be proper. In response, the Lyu and Jonas references have not been used in combination in the previous office action.

35. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, all of the references are analogous art, containers with integral bottoms, and represent knowledge generally available to one of ordinary skill in the art.

36. Applicant observes that Jonas makes it clear that its teachings are limited to a particular container configuration and unless a container meets the restrictions of the

equations disclosed in Jonas the probability of producing a viable container configuration is less than five per cent. Applicant references another application similar to Jonas in which the containers are higher than they are wide. Applicant assumes that any combination of Jonas with another reference must incorporate the bottom profile of the other reference. In response, the Jonas reference cited in this action teaches the bottom configuration of the receptacle and does not address the height and rim diameter of the container. The secondary reference similar to Jonas and cited by the applicant illustrates receptacles in which the rim diameter of the container is smaller than the height of the container but does not teach that the rim diameter cannot be larger than the height of the container. This secondary reference does not preclude a container with the bottom configuration of Jonas having a rim diameter larger than the container height. All of the critical dimensions of the Jonas reference relate only to the bottom profile itself. Jonas has been combined with Echternach for the teaching of the height and diameter of containers. It is not necessary to incorporate the bottom profile of Echternach in order to utilize the teachings of Echternach about the receptacle dimensions known in the art.

37. Applicant argues that none of the references teach or suggest the second distance approximately twice the first distance in combination with the elements of claim 1, In response, Sugiyama discloses that it is known in the art to have receptacles in with the second distance as defined in the claims is approximately twice the first distance. The fact that Sugiyama has a different bottom configuration does not preclude using it as a teaching for this concept.

38. With respect to claim 14, applicant argues that the Harvey, Echternach and Sugiyama references would not be looked to arrive at the claimed invention of a rimming dish. In response, claim 14 recites a receptacle. The remainder of the language in the preamble is intended use. The references disclose a receptacle and the combination of Harvey, Echternach and Sugiyama are capable of the functions recited in claim 14.

39. In response to applicant's argument that the references do not suggest a body portion suitable for supporting granular material and allowing the material to move toward the base portion, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

40. Applicant argues that the combination of the Harvey, Echternach and Sugiyama references would result in a container with a flat bottom. In response, the Harvey reference has a domed bottom configuration. Echternach is used as a teaching for the relationship of the receptacle height and rim diameter. Sugiyama is used as a teaching of the relationship of the height of the raised portion (dome) to the receptacle height. Use of the teachings of the Echternach and Sugiyama references does not preclude use of the bottom configuration of Harvey.

41. Regarding claim 19, applicant argues that Biggins, Echternach and Sugiyama teach flat bottoms and Jonas states that the bottom should be as flat as possible; thus, the container resulting from combining the above references would have a flat bottom.

In response, Jonas is used for teaching the profile of the raised portion of the receptacle. While Jonas states that the bottom should be as flat as possible, it does teach the raised portion configuration required by the claim (Figure 5).

42. Applicant argues that none of the references taken singly or in combination teach the limitations of the claim. In response, this is addressed in the above office action.

43. Applicant's arguments with respect to claims 21-23 have been considered but are moot in view of the new ground(s) of rejection.

44. Additionally, applicant argues that the limitations of claim 22 would not be obvious in the prior art because the prior art is not concerned with permitting access to the bottom of the container for rimming drink ware. In response, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Conclusion

45. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HARRY A. GROSSO whose telephone number is (571)272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anthony D Stashick/

Anthony D Stashick
Supervisory Patent Examiner, Art Unit 3781

hag
/HG/